

1 UNITED STATES DISTRICT COURT.

2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : CR 03-929/05-060

5 -against- United States Courthouse

6 : Brooklyn, New York

7 VINCENT BASCIANO

8 MICHAEL MANCUSO

9 ANTHONY INDELICATO

10 ANTHONY DONATO

ANTHONY AIELLO

VINCENZO MASI

11 Defendants.

12 : March 30, 2007
9:30 o'clock a.m.

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14 TRANSCRIPT OF STATUS CONFERENCE

15 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS

UNITED STATES DISTRICT JUDGE

16 UNITED STATES ATTORNEYS OFFICE

17 GREG ANDRES

THOMAS SEIGEL

18 JOHN BURETTA

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For: Basciano

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23 DAVID LEWIS, ESQ.

24 JOHN MITCHELL, ESQ.

For: Mancuso

1 RICHARD REEVE, ESQ.
2 MICHAEL SHEEHAN, ESQ.
3 For: Indelicato

4 MAURICE SERCARZ, ESQ.
5 MITCHELL DINNERSTEIN, ESQ.
6 For: Donato

7 SUSAN KELMAN, ESQ.
8 LEE GINSBERG, ESQ.
9 For: Aiello

10 OLIVER STORCH, ESQ.
11 For: Masi

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18 Proceedings recorded by mechanical stenography,
19 transcript produced by CAT.
20 THE CLERK: United States versus Basciano, et al.

21 Docket No. 03929/05-060.

22 For the government?

23 MR. BURETTA: John Buretta, for the government.

24 MR. SAVITT: Ephraim Savitt, for Mr. Basciano who is
25 present.

26 THE COURT: Good morning.

27 MR. SAVITT: Mr. Kousouros is engaged in trial and he
28 has asked me to convey his regards, Your Honor.

29 MS. CARVLIN: Stephanie Carvlin.

30 THE COURT: Mr. Mancuso.

31 MR. MITCHELL: John Mitchell, Your Honor, good

1 morning.

2 THE COURT: Good morning, Mr. Mancuso, how are you,
3 sir?

4 DEFENDANT MANCUSO: Good morning.

5 THE COURT: And for Mr. Indelicato?

6 MR. REEVE: Richard Reeve, Your Honor.

7 THE COURT: Good morning.

8 MR. REEVE : Good morning.

9 THE COURT: Good morning, sir. And for Mr. Donato?

10 MR. SERCARZ: Maurice Sercarz and
11 Mitchell Dinnerstein.

12 DEFENDANT DONATO: Good morning, Judge.

13 THE COURT: For Anthony Aiello?

14 MR. GINSBERG: Lee Ginsberg, good morning.

15 Ms. Kellman was here before. She may have had to go somewhere
16 else.

17 THE CLERK: She's with Judge Dearie.

18 MR. GINSBERG: I think she is with another judge.

19 THE COURT: And for Mr. Masi?

20 Mr. Masi, good morning.

21 DEFENDANT MASI: Good morning.

22 MR. STORCH: Oliver Storch.

23 THE COURT: Good morning, Mr. Storch.

24 MR. BURETTA: We are on for a status. As we had
25 discussed last time, we were hopeful that we would have a

1 decision by the Attorney General regarding the death penalty,
2 the five death eligible defendants.

3 THE COURT: No decision?

4 MR. BURETTA: We have not heard.

5 THE COURT: What is going on down there?

6 MR. BURETTA: They seem a little bit busy.

7 THE COURT: That having been said, I still need a
8 decision.

9 MR. BURETTA: We want a decision, too.

10 THE COURT: The executive branch has to continue.

11 MR. BURETTA: Absolutely. In addition, the polygraph
12 for the defendant Basciano just occurred yesterday and I
13 assume defense counsel will want to transmit that to the death
14 penalty committee in Washington. That had been their desire.
15 So, since it just happened yesterday, I don't think they
16 actually have the results back yet, but we will ask,
17 obviously, that they transmit those as soon as possible, since
18 they do want them included in the analysis of whether to seek
19 the death penalty against their client.

20 MR. SAVITT: Which we will, Your Honor, yes, sir.

21 The polygraph examination took place yesterday in the morning.

22 (Susan Kellman, Esq. now present in the courtroom)

23 And according to our polygraph expert, who will
24 administer the test, we should have some results this
25 afternoon, and as soon as we find out, the Court will find

1 out, the government will find out, and we will transmit.

2 THE COURT: And the committee will find out.

3 Do you plan to provide the information to all of
4 those entities irrespective of the outcome?

5 MR. SAVITT: It would behoove us to do so because if
6 you don't hear from us I think certain negative inferences
7 might be drawn from our silence, even if it is a criminal
8 case.

9 THE COURT: I was just curious, but I think it ought
10 to be done very promptly. Let's get this resolved so that --
11 and let me ask this. Does the committee in Washington know
12 that the test has been conducted or was to be conducted
13 yesterday?

14 MR. SAVITT: They know that it was to be conducted. I
15 don't know about the timing. Perhaps Mr. Buretta knows.

16 MR. BURETTA: I believe they are aware of that.

17 THE COURT: Okay. So if the committee receives the
18 results at the beginning of next week, for instance, do you
19 have a sense of how much longer it will take? Does this
20 restart the process in Washington?

21 MR. BURETTA: No, Judge. It does not restart it.

22 THE COURT: And so, you have the sense of when we
23 will know -- have an answer, all other things being equal?

24 MR. BURETTA: Yes, the committee had indicated to
25 both defense counsel and the government at the meeting that

1 they would act expeditiously. They understood Basciano's
2 desire to have the polygraph results before them before a
3 decision was made by the Attorney General. They did indicate
4 that it would be before, and indeed, they had hoped quite a
5 bit before the impending trial date, which is in mid April.
6 So one suggestion would be we hold a status in two weeks, and
7 we keep, you know, Washington apprised, and we will do that,
8 that we have another status in two weeks. We need to know and
9 we have a trial date.

10 THE COURT: Well, I'm go to ask you to convey to the
11 Attorney General's Office with respect that we have five
12 defendants who are death eligible and one who is not, and I
13 need to be able to make plans for all six of those people, and I
14 as to those who are not certified, move them along to trial,
15 either with me or with another judge, and I have other judges
16 who have volunteered to conduct trials -- not death penalty
17 trials. No one has volunteered to conduct any of my death
18 penalty trials, if I have them. I have one coming up, for
19 sure, but other trials which are not death penalty trials,
20 there will be other judges who are willing to conduct those
21 trials, and so, I can move those cases along with greater
22 speed if we need to have separate trials for various
23 defendants. So I just tell you that.

24 So how about the 13th of April at 11: 00 a.m. for
25 status conference?

1 MR. BURETTA: Fine.

2 MR. SAVITT : Fine, Your Honor.

3 THE COURT: For conference on this case, and please
4 inform the Attorney General that I respectfully request that
5 we have a decision from the Attorney General by that date.

6 MR. BURETTA: We will do that.

7 THE COURT: I mean it is really important that we
8 get answers, is what I'm saying, for the defendants and for
9 everybody concerned. Having just lived through a death penalty
10 trial which resulted in the death penalty, I don't think
11 there's anything more serious that anybody does in the
12 judicial system than dealing with this and I think we ought to
13 get as much resolution as we can as quickly as we can in order
14 to do justice. So we have other issues. We have an issue --
15 do we have an issue?

16 MR. BURETTA: The government's received two letters
17 regarding the government's proposed order regarding
18 communications with the press. The Court had issued an order
19 for us to respond within ten days to the first letter.
20 However, we received a second letter yesterday from counsel
21 for Basciano and we would request until April 9th to respond
22 to both letters.

23 THE COURT: The letter you received yesterday from
24 Mr. Basciano's counsel was about the limitations of
25 conversation with the press.

1 MS. KELLMAN: Yes, Your Honor.

2 MR. BURETTA: Correct.

3 THE COURT: I don't think I have that letter. Hold
4 on.

5 MS. CARVLIN: We sent you a courtesy copy.

6 THE COURT: I'm sure you did, but you know -- oh,
7 yes. Yes, I have it. I will look at it carefully. I will
8 give you the additional time.

9 MR. BURETTA: Thank you.

10 THE COURT: Let me just say this. I have reviewed
11 rule -- local criminal rule 23.1, and I think it has a fair
12 set of guidelines in the rule as to what is a fair matter for
13 discussion and what is an appropriate matter for discussion
14 with the press or anyone else who is not a party to the
15 litigation, and generally speaking, I'm disinclined to order
16 people to do things that the local rules require them to do
17 because they know the local rules require them to do them. On
18 the other hand, the timing of when some of these rules become
19 effective, such as local rule 231(c), which discusses the way
20 people should be -- counsel should behave during the trial of
21 a criminal matter, including the period of selection of the
22 jury, that subsection may be appropriate to apply beginning
23 immediately in a case which is death eligible in as much as
24 it's so difficult to pick a fair and impartial jury for a
25 death penalty case, in any event. So I just point out that,

1 perhaps, you should address timing in your submission as well
2 as everything else, but I think these rules are fair and
3 balanced, and I would prefer if I didn't have to order anyone
4 to do anything, frankly, and I let you follow the rules, and
5 then, if we had a problem, address the problem, but you let me
6 know why it is you think you need something more structured at
7 this point. Okay.

8 MR. BURETTA: On that score, Judge, our request
9 would be that we start to apply Subsection C now, and if
10 counsel were willing to agree with that, and that is fine, and
11 eliminate the need for an order, but our concern is precisely
12 that when you have the matter before the Attorney General and
13 the death penalty committee and there are extra judicial
14 comments being made about presentations or the names of people
15 administering polygraphs, etcetera, that aren't raised in
16 court or in a submission to the Court, that concerns us, and
17 so I don't know what defense counsel's position would be about
18 that.

19 THE COURT: Well, I just raise it and if anyone
20 would like to submit some comments on that particular issue,
21 I'd be glad to hear them. There's a lot in some of these
22 letters about constitutional limitations and constitutional
23 rights, and I don't know how productive it would be to
24 litigate that. Certainly, you have a right to litigate
25 anything you think is appropriate to litigate with me, and

1 with the appellate courts, if you think that's worthwhile, but
2 I'm just trying to afford the defendants a fair trial, and
3 avoid trying the case in the press in a situation where we may
4 have a death penalty trial here. So you will make your
5 submission and if anyone else wants to submit anything on or
6 about April 9th, feel free to do so. I think you have an
7 understanding of my preference at this point as opposed to
8 instructions at this point.

9 MS. CARVLIN: Yes, Your Honor.

10 THE COURT: Do we have anything else for today?

11 MR. BURETTA: Not from the government.

12 THE COURT: All right. Is there any objection to
13 the exclusion of time until April 19, 2007?

14 MR. STORCH: Thirteenth.

15 MR. SERCARZ: Thirteenth. None, Your Honor.

16 THE COURT: All right. Time is excluded between
17 today and April 13, 2007 in the interest of justice under the
18 Speedy Trial Act, inasmuch as this case has been designated
19 complex and also, for providing of additional information to
20 the Court on the issues that are open, and hopefully, we will
21 be able to move forward with some structure on April 13th with
22 the cooperation of the Justice Department in Washington.

23 All right. Thank you, very much. We are adjourned.

24 Those who celebrate, have a good holiday.

25 (Proceedings adjourned as above set forth)

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